



ARIZONA

REAL ESTATE BULLETIN

Arizona Department of Real Estate • Vol XXIV, No. 1

August
1999

Annual Edition
www.re.state.az.us

Commission disclosure rule in abeyance

Commissioner Jerry Holt has announced that the Department will no longer require compliance with Commissioner's Rule R4-28-701.

The Rule states that a real estate broker representing a party in a transaction shall disclose to all the parties in the transaction, in writing before completion of the transaction, the identity of any licensee receiving compensation.

"Based on my 25 years experience as a real estate broker coupled with my eight years service as Arizona's Real Estate Commissioner, I have concluded that R4-28-701, as written, serves no useful purpose in protecting the public interest. Therefore, I have decided to pursue the repeal of this rule and, in light of that decision, we are not going to require compliance," the Commissioner said.

Response to the Commissioner's decision by the real estate industry is very positive, judging by e-mail received shortly after the announcement was made.

The Department will propose repeal of R4-28-701 in its 1999 rulemaking package (see page 3).



Cindy Ferrin completes 25 years of service with ADRE

Commissioner Jerry Holt congratulates Customer Services Division Director Cindy Ferrin on her 25th year with the Department. She began her service as a clerk-typist, and served as Assistant Chief Investigator and Director of the Licensing Division before taking charge of the Customer Service Division. "Cindy has a demanding job," said Commissioner Jerry Holt, "and handles it well. Customer surveys show that an overwhelming number of people are pleased with the service Cindy and her people provide. We are extremely fortunate to have her on our staff."

Ms. Ferrin's Division handles more than 55,000 telephone calls and nearly 550 personal visits each year from licensees and the public. During the past fiscal year, the Division mailed or faxed nearly 700 complaint forms and 6,000 other forms and publications to Department customers.

Legislature funds one mass-mailing of *Bulletin*

This issue of the Arizona Real Estate Bulletin has been mailed to Arizona's 43,741 active and inactive real estate licensees.

The Department asked the Legislature to appropriate enough money to print the Bulletin and mail it to all active and inactive licensees four times in the 1999-2000 fiscal year. The Legislature appropriated enough money for

this one issue.

To purchase a subscription to receive all six yearly issues of the Bulletin, send your check for \$10 to Bulletin, ADRE, 2910 N. 44th St., Phoenix AZ 85018.

The Bulletin is also available on the Department's Web site in Adobe Acrobat (.pdf) format at www.re.state.az.us where you will also find a wealth of information about the Department, forms

and publications you may download, information for consumers, a directory of Arizona's nearly 37,000 active licensees and links to other Web sites of interest to the real estate professional.

"Our Web site has become an important line of communication with our licensees," said Commissioner Jerry Holt. "We are working every day to make it more useful and interesting."

Overhaul of Commissioner's Rules became effective February 3

A substantial revision of Title 4, Chapter 28, Arizona Administrative Code (the Commissioner's Rules) became effective February 3.

In rewriting the Commissioner's Rules, the Department has tried to make them more clear and concise and easier to understand.

Here are some of the provisions of the new Rules which affect most licensees:

R4-28-102

Document Filing; Computation of Time

All documents are considered filed on the date received by the Department. An original or renewal application postmarked on or before the end of the application or renewal deadline is considered timely. Under the old Rule, the Department had to actually receive the application on or before the end of the application or renewal deadline. Postmarks were not considered in determining whether the deadline had been met.

Renewals must be postmarked by the last calendar day of the month in which the license expires.

If a licensee wishes to appear at the Department's Phoenix or Tucson office to present a renewal form and the last day of the renewal month falls on a weekend, Department policy is to accept the renewal as timely on the following Monday. If that Monday is a holiday, the renewal will be accepted on the following Tuesday.

R4-28-103

Licensing Time Frames

The Department is now required by law to issue or deny a license within certain overall time-frames after we receive an application. An "administrative completeness review" time-frame begins on the date the Department receives an application. The Department will notify a license applicant in writing within 15 days if the application is incomplete. (Other time-frames apply to other applications such as entity broker licenses, public reports and others. Consult the Rule for specific times.) The notice specifies what information is missing. If the Department does not provide notice to the applicant, the license application is considered complete.

An applicant with an incomplete license application shall supply the missing information within the completion request period established by the Rule. The administrative completeness review time-frame is suspended from the date the Department mails the notice of missing information to the applicant until the date the Department receives the information.

If the applicant fails to submit the missing information before expiration of the completion request period, the Department closes the file, unless the applicant requests an extension. An applicant whose file has been closed may reapply by submitting a new application.

A "substantive review" time-frame established by the Rule begins after the application is administratively complete. If the Department makes a comprehensive written request for additional information, the applicant for a license shall submit the additional information identified by the request within 30 days. (Other time-frames apply to other applications. Consult the

rule for specific times.) The substantive review time-frame is suspended from the date the Department mails the request until the information is received by the Department. If the applicant fails to provide the information identified in the written request, the Department shall consider the application withdrawn.

If an application is denied, the Department sends the applicant written notice explaining the reason for the denial with citations to supporting statutes or rules, the applicant's right to seek a fair hearing, and the time period for appealing the denial.

Specific details about these time-frames are contained in R4-28-103.

R4-28-104

Fees

Under the new rules, those who apply for license renewal after their license has expired will be charged a graduated late-renewal fee. Salespersons will pay a \$10-per-month late fee, not to exceed \$60. Brokers will be charged a \$20-per-month late fee, not to exceed

Continued on page 8

Proposed Rule revisions available from ADRE Web site

A draft of the Department's proposed 1999 rulemaking package is now available from on the Department's Web site at www.re.state.az.us/library.html.

The document, available in Adobe Acrobat and Microsoft Word format, contains only those subsections being amended or repealed. All of the present Commissioner's Rules are available from the same source. The document has been furnished to more than 250 stakeholders who have expressed an interest in the Department's rulemaking process.

Commissioner Holt said "I strongly encourage real estate professionals to read the proposed rules and make a written response during this public comment period." You may direct your comments to

Deputy Commissioner John King
ADRE

2910 N 44th Street, Suite 100

Phoenix AZ 85018

until August 18, 1999.

After the public comment period, the Department will analyze the correspondence, determine if and how the proposed rules should be modified, and establish whether additional drafts need to be written or meetings held with stakeholders to discuss the rulemaking.

When a final draft is established, the proposed rules will be published in the *Arizona Administrative Register* and an additional comment period will be scheduled to coincide with public hearing to be held October 13 in Phoenix and October 14 in Tucson (see page 3).

After adopting the rules, the Department will appear before the Governor's Regulatory Review Council to respond to any comments the Council may have regarding the rules and the economic consumers' statement. At that time, the Council may approve the adopted rules or return them to the Department for changes.



Jerry Holt

News From The Commissioner

Commissioner's Rule R4-28-701, which became effective in February, requires brokers to disclose, in writing, the identity of any licensee sharing a commission in a transaction. The rule was well intended, but we soon found it unnecessary (the public, it seems, has little interest in who shares a commission with whom) and a needless burden on brokers.

Typically, the employment agreement (listing/buyer's broker agreement) stipulates not only that the client is willing to pay (or allow to be paid) a commission to the agent when the agent performs, but additionally that the agent may enlist the assistance of other licensees (and share part of the commission) to accomplish the purpose of the agreement, i.e., to find a property for the buyer to buy or to sell the seller's listed property.

Because these disclosures are made as an integral part of the employment contract between agent and client, what useful purpose does it serve to require the broker to again disclose specifically with whom (licensees only) a commission was shared?

In my view, no useful purpose is served and protection of the public is not enhanced in the slightest.

For that reason, the Department will seek to have the rule repealed this year. If we are going to repeal the rule, it makes no sense to require compliance. So, you may safely ignore R4-28-701.

New Commissioner's Rules

As many of you know, as a result of our statutory mandate to perform a complete review of existing rules every five years, we have completely rewritten the Commissioner's Rules. The new rules will be included in the 1999 Arizona Real Estate Law Book which we hope to have available later this month, or in early September.

A summary of the changes will be found on page 2. You may download the Commissioner's Rules (37 pages) from the Department of Real Estate Web site, www.re.state.az.us.

1999 Rulemaking

As reported in this issue of the Bulletin, we have posted our proposed 1999 changes to the rules on our Web site (see our Web page Table of Contents) and mailed copies of the proposals to more than 250 stakeholders who have expressed interest in our rulemaking process. To obtain a copy of the document, please get in touch with Cindy Ferrin in our Customer Services Division. You may phone her at 602/468-1414, extension 100.

I invite you to read our proposal and send your comments in writing by August 18. You may direct them to:

Deputy Commissioner John King
ADRE, 2910 N. 44th Street, Ste 100
Phoenix AZ 85018

Two public hearings on the proposed rule changes are scheduled in 1999, one in Phoenix on October 13 at 10 a.m. here at the Department of Real Estate, and another on October 14 at 10 a.m. at the Department's office in Tucson.

Lombardo v. Albu

A decision in this case was handed down by the Arizona Court of Appeals in May and is currently pending appeal at the Arizona Supreme Court.

Basically, the Appellate Court ruled that real estate licensees (agents) have an absolute fiduciary duty to their clients (much as do lawyers) and have no obligation to disclose to the other party (in this case, the seller) that the agent's clients (in this case, the buyers) had told the agent, after their offer to purchase had been accepted by the sellers, that they expected difficulty in obtaining fi-

nancing to close the transaction.

The Court said, "We affirm [the lower court's ruling] because Albu, the buyer's agent, owed the sellers no duty to disclose her clients' financial condition."

The Appellate Court acknowledged that Commissioner's Rule R4-28-1101(B)(2) exists, but said it did not create "a duty which, if breached, gives rise to liability in tort."

This 2-1 decision, unless reversed by the Arizona Supreme Court, will place licensees in a most unenviable position, as I see it. R4-28-1101(A) declares an agent in a transaction not only to have a fiduciary duty to the agent's client, but "to deal fairly with all other parties..." and R4-28-1101(B)(2) mandates an agent to disclose any information that the buyer is, or may be, unable to perform due to insolvency or otherwise. The agent is now squarely on the horns of a dilemma: Do I disclose the shaky financial condition of my buyer and be sued by my own client for breaching my fiduciary duty, or do I not disclose and risk losing my license for violating a Commissioner's Rule?

How would you feel saying, under oath, "Of course I didn't disclose the fact that there were no utilities or water available. I had a fiduciary duty to promote the best interests of my client and telling the buyer about these deficiencies would have killed the deal!" Isn't that what got Ned Warren in trouble?

I expect to see the Department filing an *amicus curiae* brief supporting the appeal from the Appellate Court decision.

In my opinion, those currently contemplating filing *amicus curiae* briefs in favor of the Appellate Court decision would be well advised to reconsider. Supporting this decision is akin to "stepping on the business end of a rake."

ARIZONA REAL ESTATE BULLETIN

An official publication of
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The Arizona Real Estate Bulletin is published six times
each year and is available from the
Department's World Wide Web site at
<http://www.re.state.az.us>
First-class mail subscriptions: \$10/year.
The August issue is mailed free of charge
to all active and inactive licensees' home address.

Articles reprinted from other publications
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1999 Schedule of Broker Audit Clinics

A.R.S. § 32-2136 requires all newly licensed real estate brokers to attend a Broker Audit Clinic presented by the Department within 90 days of issuance of their original broker's license. *Effective July 21, 1997, all designated real estate brokers must also attend a Broker Audit Clinic within 90 days after becoming a designated broker unless the broker has attended an audit clinic during the broker's current licensing period.* All designated brokers shall attend a broker audit clinic once during every four-year period after their initial attendance.

Seating is limited and reservations are required. To make a reservation for a Phoenix clinic, call the Department's Customer Services Division at (602) 468-1414, extension 100. In Tucson, call (520) 628-6940. Those who fail to make reservations will be turned away if seating is not available. Brokers who attend will receive three hours of continuing education credit in the category of Commissioner's Standards.

The following is the schedule of Clinics to be offered in Phoenix and Tucson during the remainder of 1999. Additional clinics may be scheduled from time to time at other locations in Phoenix and in rural areas.

PHOENIX

Industrial Commission Auditorium
800 W. Washington

1 p.m. to 4 p.m.

August 19
September 9
September 16
October 21
November 18
December 16

TUCSON

State Office Building
400 W. Congress
Room 222

1 p.m. to 4 p.m.

August 18
September 15
October 20
November 17
December 15

Current license must now be submitted with sever or change form

The new Commissioner's Rules, which became effective February 3, now require that all sever or change forms

submitted by employing or designated brokers be accompanied by the affected person's current real estate license.

**The mission of the
Arizona Department of Real Estate
is to safeguard and promote the public interest
through timely and capable assistance,
fair and balanced regulation,
and sound and effective education.**

ADMINISTRATIVE ACTIONS

REVOCATIONS

99A-023

Kimberly L. Steding
Phoenix

DATE OF ORDER: June 10, 1999

FINDINGS OF FACT: Petitioner was issued an original real estate salespersons license in July 1992. Her current license will expire on July 31, 2000. Petitioner testified that she placed her license on inactive status in 1994 and has not used her license since then.

In July 1996, Petitioner was convicted of DUI in Phoenix Municipal Court. On July 26, 1996, Petitioner submitted a renewal application which the Department approved reserving the right to re-allege the matter in any future administrative action.

In November 1997, Petitioner was charged with Aggravated Driving or Actual Physical Control While Under the Influence of Intoxicating Liquor or Drugs, class 4 felonies.

In June 1998, Petitioner submitted a timely renewal application in which she disclosed the pending DUI case. The Department approved Petitioner's application prior to conviction on the felony charges.

In August 1998, Petitioner was convicted of the charges in Maricopa County Superior Court. Petitioner was placed on supervised probation for four years and ordered to serve four months in prison.

On February 4, 1999, the Department summarily suspended Petitioner's license. Petitioner requested an administrative hearing. At the hearing, testimony was given by Petitioner's boyfriend attesting to her character.

Petitioner also testified that she is a person of good character but made some errors in judgment in the past. She also testified that she is appealing her felony conviction.

VIOLATIONS: Petitioner has been convicted in a court of competent jurisdiction of a felony. Petitioner is not a person of honesty, truthfulness and good character, in violation of A.R.S. § 32-2153(B)(2) and (7).

ADMINISTRATIVE LAW JUDGE'S RECOMMENDATION: The Department's summary suspension of Petitioner's license be upheld; Petitioner's real estate salesperson's license be revoked.

COMMISSIONER'S ORDER: Petitioner's real estate salesperson's license is revoked.

LICENSE APPLICATION DENIED

H-1998

Michael G. Fledzinskas
Camarillo, Calif.

DATE OF ORDER: June 3, 1999

FINDINGS OF FACT: In Petitioner's September 1998 application for an original real estate salesperson's license, he disclosed an August 1996 felony conviction for burglary. In May 1996,

when he had just turned 18, he broke into a car in Sedona and stole a wallet. At the time, police were conducting a stakeout in the area because of a rash of car burglaries, and were watching when he broke the car's window.

The Department notified Petitioner that it intended to deny his license application. At the administrative hearing, Petitioner said he is ashamed and characterized his actions as "stupid." He testified that since the incident he has worked in positions of trust in which he has had responsibility for safekeeping cash and other assets.

His father, a licensed Arizona real estate broker, testified he would agree to having Petitioner work for him, if licensed, to ameliorate any of the Department's concerns.

VIOLATIONS: Petitioner has been convicted of a felony in violation of A.R.S. § 32-3152(B)(2). ADMINISTRATIVE LAW JUDGE'S RECOMMENDATION: The Department should grant Petitioner a probationary license for two years and that he work under the supervision of his father.

COMMISSIONER'S ORDER: The Department has no statutory authority to issue a probationary license. Application for a license denied.

99A-007

Carl Keith
Cave Creek

DATE OF ORDER: June 3, 1999

FINDINGS OF FACT: In April 1999, a hearing was held on Petitioner's appeal of the Department's denial of his application for a real estate salesperson's license.

In June 1988, Petitioner pleaded no contest to Reckless Driving Involving Alcohol or Drugs, or Both, a misdemeanor, in Pasadena, Calif. The Court placed Petitioner on two years' supervised probation.

In July 1993, Petitioner was convicted of nine counts of Mail Fraud and Causing an Act to be Done in U.S. District Court, Central District of California, and sentenced to 27 months in federal prison.

In December 1994, the California Department of Real Estate revoked Petitioner's California real estate broker's license.

In December 1998, Petitioner submitted an original application for an Arizona real estate salesperson's license. The Department denied the application. In February 1999, Petitioner requested an administrative hearing in this matter.

Petitioner testified that he served the prison time and paid the restitution and fines ordered by the Courts.

He testified that from 1991 to 1993 he managed a bookstore, and that upon his release from prison, the owner rehired him to manage the store, knowing about his criminal convictions.

Petitioner submitted 40 character reference letters written by family members, friends, former business associates and employees. All of the letters were written in 1993 prior to Petitioner's prison sentence.

VIOLATIONS: Petitioner has been convicted in courts of competent jurisdiction of a felony or crime of moral turpitude within the meaning of A.R.S. § 32-2153(B)(2). Petitioner has been found guilty in U.S. District Court of a crime constituting fraud or dishonest dealings within the meaning of A.R.S. § 32-2153(B)(5). Petitioner was not a person of good character within the meaning of A.R.S. § 32-2153(B)(7). Petitioner violated the laws of the U.S. District Court, violations involving fraud and dishonest dealings within the meaning of A.R.S. § 32-2153(B)(10). ADMINISTRATIVE LAW JUDGE'S RECOMMENDATION: Petitioner's application should be denied.

COMMISSIONER'S ORDER: Application denied.

LICENSE APPLICATION GRANTED

99A-021

John Anthony Fioramonti
Tucson

DATE OF ORDER: June 23, 1999

FINDINGS OF FACT: In January 1999, Petitioner applied for an original real estate license. The application was denied. Petitioner requested an administrative hearing.

Petitioner graduated from the College of Law at the University of Arizona in May 1976 and was admitted to the Arizona Bar. He practice law in Tucson until 1993 when the Supreme Court of Arizona suspended him from the practice of law for three years after it was determined that he had violated numerous Ethics Rules.

Petitioner is currently employed as a loan officer for a Tucson mortgage firm. In July 1998, he passed the Arizona real estate salesperson's examination. In his administrative hearing, Petitioner submitted six favorable letters of reference from employers, including two attorneys in Tucson, prior law clients and business associates.

VIOLATIONS: The Administrative Law Judge found that Petitioner's actions, leading to his suspension from the practice of law, did not violate Arizona real estate statutes. The Judge also found that Petitioner's behavior since 1992 does not show or establish that Petitioner will or may be disposed to engage in the unethical behavior for which he was suspended from the practice of law.

ADMINISTRATIVE LAW JUDGE'S RECOMMENDATION: Petitioner's application be approved.

COMMISSIONER'S ORDER: Petitioner's application is approved.

Continued on page 6

Continued from page 5

CONSENT ORDERS

99A-059

John Stanley Slaby

Tucson

DATE OF ORDER: June 1, 1999

FINDINGS OF FACT: In November 1998, Respondent submitted an application for an original real estate salesperson's license in which he failed to disclose a 1976 conviction for assault, a misdemeanor, in Tucson.

VIOLATIONS: Respondent procured or attempted to procure a license by fraud, misrepresentation or deceit, or by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1).
DISPOSITION: Respondent assessed a civil penalty in the amount of \$200.

99A-028

Thomas William Barry
Scottsdale

DATE OF ORDER: June 7, 1999

FINDINGS OF FACT: In February 1999, Respondent submitted a timely application for renewal of his real estate salesperson's license. The Department notified Respondent that it intended to deny the application. Respondent requested an informal settlement conference and hearing.

In March 1998, Respondent was convicted of Assault (Domestic Violence), a class 1 misdemeanor. He was placed on unsupervised probation for 12 months and ordered to complete a domestic non-violence program.

In November 1998, Respondent was again convicted of Assault (Domestic Violence) and sentenced to 45 days in jail, three years unsupervised probation and ordered to complete a domestic non-violence program.

VIOLATIONS: Respondent violated state laws that involve violence against another person, in violation of A.R.S. § 32-2153(B)(10).

DISPOSITION: Respondent's application for renewal shall be granted. Respondent's license is suspended for 90 days upon entry of this order.

99A-035

Deidre L. Scheer
Phoenix

DATE OF ORDER: June 10, 1999

FINDINGS OF FACT: In her September 1998 application for a real estate salesperson's license, Respondent failed to disclose a 1980 conviction for Vehicular Manslaughter.

VIOLATIONS: Respondent procured or attempted to procure a license by fraud, misrepresentation or deceit, or by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1).

DISPOSITION: Respondent's salesperson's license is suspended for 60 days to begin 10 days after entry of this Order.

99A-077

Joseph Craig Stanley
Mesa

DATE OF ORDER: June 21, 1999

FINDINGS OF FACT: Respondent was issued an original real estate salesperson's license in August 1996. That license expired on August 31, 1998. In his April 1999 late renewal application, Respondent failed to disclose a December 1996 conviction for Attempted Theft, a misdemeanor. Respondent did not disclose the conviction to the Department until he applied for license renewal.

VIOLATIONS: Respondent failed to disclose the conviction in writing within 10 days, in violation of A.A.C. R4-28-301(F), formerly (C). Respondent disregarded or violated provision of Arizona Revised Statutes, Title 32, Chapter 20, and the Commissioner's Rules, in violation of A.R.S. § 32-2153(A)(3).

DISPOSITION: Respondent's renewal application is granted upon entry of this Consent Order. Respondents renewed real estate salesperson's license is suspended, effective May 5, 1999 through July 5, 1999. Respondent to pay a civil penalty in the amount of \$500.

99A-064

Tania Coulter
Tucson

DATE OF ORDER: June 22, 1999

FINDINGS OF FACT: In her July 1998 real estate salesperson's license renewal application, Respondent failed to disclose a January 1996 conviction for DUI and an October 1996 conviction of telephone harassment, criminal damage/domestic violence, and two counts of interference with judicial proceedings, all misdemeanor convictions.

VIOLATIONS: By failing to disclose her 1996 convictions Respondent procured or attempted to procure a license by fraud, misrepresentation or deceit, or by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1). Her failure to disclose the full extent of her criminal history demonstrates she is not a person of honesty, truth and good character, within the meaning of A.R.S. § 32-2153(B)(7). Respondent failed to disclose the convictions in writing within 10 days, in violation of A.A.C. R4-28-301(F), formerly (C). She has been convicted of violating terms of a criminal or administrative order, decree or sentence, within the meaning of A.R.S. § 32-2153(B)(9).

DISPOSITION: Respondent's real estate salesperson's license is suspended for one year beginning 10 days from the date of entry of this Order. Respondent to pay a civil penalty in the amount of \$1,000.

99A-075

Jesus Moreno, aka Jess Moreno
Phoenix

DATE OF ORDER: June 22, 1999

FINDINGS OF FACT: Respondent was issued an original real estate broker's license in 1979. That license expires June 30, 2000. At all times material to this matter, Moreno was licensed as an associate broker employed by West USA Realty.

In September 1998, Moreno received a telephone call from O.C. Gilliam, Jr., concerning a lot located on the corner of 22nd Avenue and Hadley in Phoenix. Gilliam apparently had seen Moreno's name on a West USA Realty sign on or near the lot. Gilliam verbally offered to purchase the lot for \$2,000 less than the listed price. A few days later, Moreno advised Gilliam that the offer was accepted.

On September 11, 1998, Gilliam and Moreno met and prepared a purchase contract for the lot. Moreno received a \$100 earnest money deposit from Gilliam.

Gilliam states that after he received and reviewed the title report, he discovered that the legal description of the lot he contracted to buy was not the lot he intended to buy; it was for the lot next door. Gilliam advised Moreno of this and instructed him to cancel the escrow.

Because he couldn't sell the lot to any other purchaser while Gilliam's contract was pending, Moreno signed the mutual cancellation notice on behalf of Gilliam without Gilliam's authorization.

When Gilliam received the cancelled contract by mail from West USA Realty and discovered that his name had been forged, he filed a complaint with the Department. Gilliam also contacted West USA's designated broker concerning a refund of his earnest money deposit.

In a subsequent legal proceeding, Gilliam recovered the earnest money deposit.

VIOLATIONS: Respondent failed to deal fairly with all parties to the contract within the meaning of A.A.C. R4-28-1101, which constitutes a violation of A.R.S. § 32-2153(A)(3). He signed Gilliam's name to the cancellation notice without being authorized to do so, in violation of A.R.S. § 32-2153(A)(25).

DISPOSITION: Respondent's real estate broker's license is suspended for 60 days beginning 10 days from the entry of this Order. Respondent to pay a civil penalty in the amount of \$500. The designated broker for West USA Realty, Clay Fouts, was absolved of any wrongdoing in this matter and was therefore excluded from this administrative action.

99A-054

Gregory Eggstaff, President, GAE Corporation, dba Desert West Development, and the Village of West Meadows I, and in the matter of the real estate broker's license of Andrew Kist.

Glendale.

DATE OF ORDER: June 22, 1999

FINDINGS OF FACT: In May 1996, a Special Order of Exemption was issued to GAE Corporation, dba Desert West Development, for certain lots in The Village of West Meadows I ("the subdivision"). In September 1996, a Subdivision Public Report was issued to GAE for certain lots in the subdivision. The Report did not include all of the lots included in the exemption; the remainder of the lots were to be included in a later phase of the development.

At all times material to this matter, Eggstaff was president of GAE. He does not hold an Arizona real estate license.

In September 1992, Kist was issued an Arizona real estate broker's license. He is currently, and was at all times material to this matter, licensed as an associate broker employed by Re-Max Integrity. His broker's license expires September 30, 2000.

In July and August, 1997, GAE, through Kist, sold or offered to sell two lots in the subdivision for which no Public Report had been issued.

Respondents stated they were unaware that the co-applicant for the Public Report had submitted the application seeking approval of the development in phases and that not all of the lots were included in the Public Report.

When they became aware of this fact, Respondents immediately ceased offering the lots for sale and offered rescission rights and refunds to the purchasers of the two lots. Eggstaff, on behalf of GAE, immediately began the process to amend the Public Report to include all of the lots to be offered.

VIOLATIONS: Respondents were responsible to ensure that a valid public report had been issued for all lots being sold or offered for sale, and that their representations to that effect were true. Respondents sold or offered for sale lots without first obtaining a Public Report in violations of A.R.S. § 32-2183(F).

DISPOSITION: respondents to pay, jointly and severally, a civil penalty in the amount of \$500.

99A-057

**Stephen L. Smith
Mesa**

DATE OF ORDER: June 22, 1999

FINDINGS OF FACT: In his September 1998 application for a real estate salesperson's license, Respondent failed to disclose convictions between 1976 and 1979 for DUI, one for which sentencing was deferred and the charge later dismissed, and convictions for Public Intoxication, Communicating Gambling Information, a felony, and Gambling Promotion, a felony (two convictions).

Respondent stated that he believed the adjudication of the Public Intoxication charge was "deferred" and that no conviction had resulted. He said he relied on information from his attorney at the time and believed the gambling "convictions" were deferred and would not appear on his record providing he satisfactorily complied

with the terms of probation. He did complete the probation ordered.

VIOLATIONS: By failing to disclose the convictions when he applied for his license, Respondent procured or attempted to procure a license by fraud, misrepresentation or deceit, or by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1). Respondent has been convicted of a felony, within the meaning of A.R.S. § 32-2153(B)(2).

DISPOSITION: Respondent's real estate license is suspended for one month, effective upon entry of this Order. Respondent to pay a civil penalty in the amount of \$1,000.

99A-058

**Dennis E. Wagner
Glendale**

DATE OF ORDER: June 29, 1999

FINDINGS OF FACT: In his August 1998 application for a real estate salesperson's license, Respondent failed to disclose a 1972 conviction for three counts of Negligent Homicide in Anchorage, Alaska. He was sentenced to 30 days in jail and placed on probation for one year. He also failed to disclose a 1968 conviction for two counts of insufficient funds in Sheridan County, Wyo.

VIOLATIONS: By failing to disclose the convictions when he applied for his license, Respondent procured or attempted to procure a license by fraud, misrepresentation or deceit, or by filing a license application that was false or misleading, within the meaning of A.R.S. § 32-2153(B)(1). His failure to disclose his criminal history demonstrates he is not a person of honesty, truth and good character, within the meaning of A.R.S. § 32-2153(B)(7).

DISPOSITION: Respondent's real estate license is suspended for one year to begin 10 days after the date of entry of this Order. Respondent to pay a civil penalty in the amount of \$1,000.

98A-H2001

**Consent Order of Alejandro Morales and M&M Douglas Real Estate, in the matter of the real estate broker's licenses of Alejandro Morales, aka Alex Morales; and M&M Douglas Real Estate, LLC, and in the matter of the real estate salesperson's license of Rudolpho H. Alvarez
Douglas**

DATE OF ORDER: July 13, 1999

FINDINGS OF FACT: Morales was issued a real estate broker's license in January 1989. That license would have expired January 31, 1999, but Morales submitted a timely renewal application and pursuant to Commissioner's Rules, continued conducting activities requiring licensure pending final determination of this matter.

M&M Douglas Real Estate was issued a real estate broker's license on May 31, 1995. At all times material to this matter, Morales was designated broker of the firm and was responsible to supervise licensees and others in his em-

ploy.

At all times material to this matter, Rudolpho Alvarez was licensed as a real estate salesperson in Arizona and was employed by Douglas Real Estate. His license expired March 31, 1999.

In April 1998, Alvarez listed for sale a manufactured home in Douglas situated on approximately four acres of land. The home was owned by Richard and Helen Scott. The Scotts had relocated to Virginia, and much of the communication concerning the transaction were channeled through their daughter, Francis Scott ("Ms. Scott"), who lived in Douglas.

On June 23, 1998, Alvarez advised the Scotts through Ms. Scott, that he had an offer for the home. A purchase contract from Ernie and Donna Munoz (sic) provided for a purchase price of \$55,000 with \$500 earnest money. The transaction was contingent on buyers acquiring funds from a mortgage company, and buyers were to pay cash for the balance of the purchase price at close of escrow, scheduled for August 1, 1998. The handwritten words "or before" were inserted next to the August 1 date. The earnest money deposit was to be applied to the purchase price at closing.

Alvarez completed the agency confirmation block on the purchase contract to show that Alvarez and Douglas Real Estate represented the seller exclusively. Morales reviewed the contract but did not initial it because no earnest money had been received and, thus, he believed it was incomplete.

At the time Alvarez prepared the offer for Ernesto Munoz and Donna Ford ("the buyers"), they discussed the buyers' having bad credit and not qualifying for a loan. The buyers told Alvarez that they were going to borrow the money from Mr. Munoz' parents, who are in their mid-80s.

Even though Alvarez had not received the earnest money from the buyers, and despite knowing that the buyers' ability to get a loan was questionable, he faxed the purchase contract to Richard Scott on June 24, 1998, with a handwritten instruction, "Please sign on both seller lines} you and your wife."

Within a few days after the buyers signed the contract, Mr. Munoz' parents changed their minds about lending the buyers money for the home, and the buyers advised Alvarez of this information "two days later." Munoz has stated that since he knew he wouldn't qualify for a loan, he never thought any more about it.

After several weeks, when Alvarez did not return calls Ms. Scott had made to him seeking an update on the status of the transaction, Ms. Scott contacted the buyers. On or about July 14, 1998, Ms. Scott learned from the buyers that they had changed their minds and did not intend to purchase the home.

When Ms. Scott contacted the title company handling the escrow, she learned that

Continued on page 8

although the title company had received a copy of the purchase contract, it had never received the earnest money and no activity had occurred in the transaction to its knowledge.

Morales stated he did not initial the purchase contract as required by A.R.S. § 32-2151.01(D) because it was incomplete in that the earnest money had not been received.

Morales did not follow up with Alvarez to advise their clients, the Scotts, that the earnest money had not been received; to ensure that Alvarez did receive and properly deposit the earnest money; or to update the Scotts on the status of the transaction.

VIOLATIONS: When the Scotts listed their home for sale with M&M Douglas Real Estate, they established an agency relationship with M&M Douglas Real Estate, with Morales, its designated broker, and with Alvarez, a real estate salesperson working for M&M Douglas Real Estate. The agency relationship was further clarified by the purchase contract, prepared by Alvarez, who filled in formation to reflect that Alvarez and M&M Douglas Real Estate represented the seller exclusively.

Morales, as designated broker for M&M Douglas Real Estate, was responsible to ensure that M&M Douglas Real Estate and licensees under its employ dealt fairly with all parties to transactions and acted in their clients' best interests. M&M Douglas Real Estate did not act in the best interest of the Scotts, and violated its fiduciary duty to them, within the meaning of A.A.C. R4-28-1101(A).

Morales did not ensure that the Scotts were given information material to the transaction which likely would have affected the Scotts' decision to accept the buyers' offer, in violation of A.A.C. R4-28-1101(B).

Morales failed to reasonably supervise a licensee in his employ, within the meaning of A.A.C. R4-28-302(I)(1), formerly A.A.C. R4-28-303(H), in violation of A.R.S. § 32-2153(A)(21).

Morales and M&M Douglas Real Estate have violated provisions of Arizona Revised Statutes, Title 32, Chapter 20, and the Commissioner's Rules, within the meaning of A.R.S.

§ 32-2153(A)(3).

DISPOSITION: The renewal applications of Morales and M&M Douglas Real Estate are granted. Morales' real estate broker's license is suspended for one month, effective upon entry of this Consent Order, or July 1, 1999, whichever is later. Morales and M&M Douglas Real Estate each to pay a civil penalty in the amount of \$500. The civil penalties must be paid in full before the licensees may apply for license reinstatement.

99A-019

Ronald W. Baumann
Phoenix

DATE OF ORDER: July 15, 1999

FINDINGS OF FACT: In 1995 the Department issued an original real estate salesperson's license to Petitioner who submitted a timely renewal on March 29, 1999. The Department advised Petitioner that his application was denied. Baumann appealed the decision.

In his renewal application, Petitioner disclosed that in November 1998 he had pleaded guilty in Phoenix Municipal Court to a charge of Public Sexual Indecency. He was convicted of a class 1 misdemeanor and fined \$236.

VIOLATIONS: By failing to notify the Commissioner within 10 days of his conviction, Petitioner disregarded or violated provisions of Arizona Revised Statutes, Title 32, Chapter 20, and the Commissioner's Rules, in violation of A.R.S. § 32-2153(A)(3).

DISPOSITION: Petitioner's renewal application is granted. Petitioner to pay a civil penalty in the amount of \$1,000, and to attend 12 hours of continuing education, in addition to hours required for license renewal, in the categories of Real Estate Legal Issues and Commissioner's Standards.

99A-065

Edward W. Tickman
Scottsdale

DATE OF ORDER: July 16, 1999

FINDINGS OF FACT: On February 4, 1999, Petitioner submitted an incomplete original

application for a real estate salesperson's license. The application was completed on April 2, 1999. In his application, Petitioner disclosed six misdemeanor convictions.

In October 1987 he was convicted of Shoplifting and paid \$100 restitution to Smitty's Market.

In November 1987 he was arrested for urinating in public and disorderly conduct. He was convicted of intent to use marijuana and disorderly conduct and fined \$1000.

In March 1989 he was arrested for DUI and Possession of Marijuana. He was convicted of Possession of Marijuana and fined \$500.

In September 1990 he was arrested for DUI and Driving on a Suspended License. He was convicted of DUI and fined \$258.

On a date not specified in the Order, he was convicted of possession of marijuana and fined \$1,000.

In August 1991, he was arrested for Endangerment and No Arizona driver's License. He was convicted of Endangerment, a misdemeanor, in September 1991.

In December 1997 he was convicted of DUI and sentenced to 10 days in jail (nine days suspended), fined \$250 and placed on 12-months probation.

Petitioner has completed ordered alcohol screening and alcohol abuse classes, and has otherwise fulfilled all conditions of sentence from his prior convictions.

VIOLATIONS: Petitioner's conduct and criminal convictions do not demonstrate that he is a person of good character, within the meaning of A.R.S. § 32-2153(B)(7).

DISPOSITION: Petitioner's application for a real estate salesperson's license is granted. He shall abstain completely from the use of any alcohol, illegal drugs or controlled substances unless taken pursuant to a valid prescription and the orders of a medical doctor.

If Petitioner is convicted of any alcohol or drug abuse violations, the Commissioner may summarily suspend Petitioner's real estate salesperson's license and/or institute any further disciplinary proceedings he deems appropriate.

New rules

Continued from page 2

\$120.

R4-28-401

Continuing Education Requirements

The mandated continuing education categories required for license renewal have been changed. Gone is the requirement for three hours of education in environmental issues. The new mandated hours are three hours each in the following categories:

Agency Law
Contract Law
Commissioner's Standards
Real Estate Legal Issues
Fair Housing

The remaining nine hours required for renewal may be taken in any of the above subjects or in elective subjects. As in the past, the Department will accept only three hours of credit in "self-improvement" courses as part of the 24 hours required for license renewal.

R4-28-501

Advertising by a Licensee

The Substantive Policy Statement regarding the use of the words "team" or "group" in advertising has been made a rule. A real estate salesperson or broker may use the terms to advertise and promote real estate services if those terms do not constitute the use of a trade or d.b.a. name, and all of the following are true:

1. The team or group comprises only real estate salespersons or brokers.
2. The team or group members are employed by the same employing broker.
3. The designated broker maintains and

Continued on next page

Disclosure now required if property is near one of Arizona's 54 public airports

New legislation has been enacted requiring subdividers to disclose in the Department of Real Estate Public Report that a subdivision is located in the "territory of the vicinity of a public airport," defined as an area which is subject to aircraft noise some people may find disturbing.

House Bill 2404, introduced by Rep. Jeff Groscost and 10 co-sponsors, added A.R.S. § 28-8486 which states:

A. The state real estate department shall have and make available to the public on request a map showing the exterior boundaries of each territory in the vicinity of a public airport. The map shall clearly set forth the boundaries on a street map. The state real estate department shall work closely with each public airport and affected local government as necessary to create a map that is visually useful in determining whether property is located in or outside of a territory in the vicinity of a public airport.

B. For the purposes of this section:

1. "Public airport" means an airport that is owned by a political subdivision of this state or that is otherwise open to the public.
2. "Territory in the vicinity of a public airport" means property that is within the traffic pattern airspace as defined by the Federal Aviation Administration [FAA] and includes property that experiences a day-night average sound level of sixty decibels or higher at airports where such an average sound level has been

identified.

The Department has modified its application for a public report to require developers to state whether any portion of a new subdivision is within the "territory in the vicinity of a public airport." The application also asks developers to identify the name, location and distance from a subdivision of the nearest airport.

The Department has identified 54 public airports in Arizona and in May wrote a letter to each requesting the information required by the new statute. By mid-July, about two-thirds of the airports had responded. It is hoped that all of the airports will furnish noise contour and traffic pattern airspace, if that information is available, before August 6 when the legislation takes effect.

Many of the 54 airports do not have FAA defined airspace, and at many airports, the 60-decibel noise level does not extend outside the airport boundaries.

The maps and charts furnished by the airports are being converted to 11 by 17-inch format and will be available by mail at a nominal cost.

The 54 airports affected by the legislation are:

Ajo Municipal
Avra Valley
Bagdad Municipal
Benson Municipal Airport
Bisbee Municipal
Buckeye Municipal
Casa Grande Municipal
Chandler Municipal
Cochise College
Cochise County
Colorado City Municipal
Coolidge Municipal

Cottonwood
Douglas Municipal
Douglas International
Earnest A. Love Field
Eloy Municipal
Falcon Field
Flagstaff-Pulliam
Gila Bend Municipal
Glendale Municipal
Grand Canyon National Park
Grand West
Greenlee County
Holbrook Municipal
Kingman Municipal
Lake Havasu City
Laughlin-Bullhead International
Nogales International
Page Municipal
Payson Municipal
Phoenix-Goodyear Municipal
Phoenix Deer Valley Municipal
Phoenix Sky Harbor International
Pinal Airpark (Florence)
Rolle
Ryan Field
Safford Municipal
San Manuel
Scottsdale Municipal
Sedona
Seligman
Show Low Municipal
Sierra Vista Municipal
Springerville-Babbitt Field
St. Johns Industrial Airpark
Stellar Airpark
Tassi
Taylor
Tombstone Municipal
Tucson International
Valle
Wickenburg Municipal
Williams Gateway
Window Rock
Winslow-Lindberg Regional
Yuma International

Rules

Continued from page 8

files with the Department a current list of all members of each group or team in the broker's employ.

4. The advertising otherwise complies with statutes and rules.

The use of electronic media, such as the Internet or web-site technology, which targets Arizona residents with the offering of a property interest, constitutes the dissemination of advertising as defined in A.R.S. § 32-2101(2).

HUD/ADRE agreement amended

The February 3, 1982 agreement between the U.S. Department of Housing and Urban Development (HUD) and the Department of Real Estate, which states that the Department's subdivided land sales program is certified by HUD, has been amended.

The amendment, effective July 30, 1999, states, "This agreement is amended to include unsubdivided land which because of a common promotional plan is not exempt from the registration re-

quirements of the Interstate Land Sales Full Disclosure Act (ILSFDA)."

HUD has accepted an ADRE subdivided land public report as evidence that the subdivision meets the requirements of ILSFDA. But a developer who *also* dealt in unsubdivided land had to comply with the registration requirements of ILSFDA.

Now, the developer need only register the ADRE certified public report with HUD for either type development.

Subdivision applications now available on Web in 'Word' format

In response to suggestions from developers and title companies, all subdivision application forms are now available in Microsoft Word format on the Department's Web site at www.re.state.az.us.

From the Table of Contents, select "Subdivision Application Forms." Subdivision forms are found at the bottom of the resulting page.

Several forms have been recently revised (revision dates are shown in the Library). *Use of an outdated form can result in rejection of your application.*

Forms available in Microsoft Word format are:

- Subdivision Public Report Application
- Amended Public Report Application

- Public Report Receipt
- Subdivision Public Report Template
- Public report Disclosure Statements
- Time-Share Public Report Application
- Time-Share Public Report Template
- Unsubdivided Land Public Report Application
- Unsubdivided Land Public Report Template
- Conditional Sales Exemption Petition Cover Letter
- Petition for an Unsubdivided Land Conditional Sales Exemption
- Petition for a Subdivided Land Conditional Sales Exemption
- Cemetery Certificate of Authority Application
- Membership Camping Public Report Application

ADRE Web site moved to State server; new address is www.re.state.az.us

Our World Wide Web site has been moved to the Arizona Department of Administration (DOA) Web server at a new URL, www.re.state.az.us.

Use of the old URL, www.adre.org, will take new users to the new site automatically for an undetermined period of time.

The move was made to provide faster Internet access for the Department's Phoenix and Tucson offices and to take advantage of DOA's ability to provide Internet e-mail access through each ADRE employee's computer.

The e-mail address for each division and key employees can be found at www.re.state.az.us/phones.html.

One of the most frequently visited portions of the site is the "Late-Breaking News" page which is updated frequently, sometimes two or three times each week. Visitors to the site are invited to subscribe to a Late-Breaking News e-mailing list. Subscribers are notified by e-mail when news is posted on the page. More than 650 people have subscribed to this service.

Department installs speedier Fax Response Service

The Department's fax response software fell victim to 10-digit dialing recently introduced in the Phoenix area (it couldn't resist dialing a "1" before the area code) and as a result we've installed a new, faster system.

Callers may have a document catalog sent to their fax machine, then call back and order documents by a four-digit catalog number.

The catalog of documents can be found on our Web site in the Table of Contents.

The quality of documents obtained from our Web site, www.re.state.az.us, in Adobe Acrobat format is, of course, far superior to those downloaded from the Fax Response Service. The Department realizes that many people, especially in rural areas, do not have Internet access, and the Fax Response Service provides a low-cost way to obtain documents.

To use the service, call the Department at 602/468-1414, and at the voice greeting press 3.

Substantive Policy Statements revised

The Department has recently made significant revisions to its Substantive Policy Statements.

A Substantive Policy Statement is defined by A.R.S. § 41-1001(20) as "a written expression which informs the general public of an agency's current approach to, or opinion of, the requirements of the federal or state constitution, federal or state statute, administrative rule or regulation, or the final judgment of a court of competent jurisdiction, including where appropriate, the agency's current practice, procedure or method of action based upon that approach or opinion."

Translated into English, that means that Substantive Policy Statements describe the way in which the Department interprets and enforces certain real estate statutes and Commissioner's Rules.

It is in your best interest to become familiar with these documents. You will find all 21 of them on our Web site at www.re.state.az.us/spsindex.html in plain text and Adobe Acrobat format.

Adverse land conditions must be disclosed

We have received a letter from a Queen Creek resident expressing concern that purchasers of land north of San Tan Mountain in southeastern Maricopa County and northern Pinal County, a region known as the San Tan Ranches Subdivisions created between 1962 and 1972, are not being provided with disclosure of fissure cracks, land subsidence, illegal dump sites and possible flood sites within the region.

Licensees are reminded that Commissioner's Rule R4-28-1101 requires that "a licensee participating in a real estate transaction shall disclose in writing to all other parties any information which the licensee possesses that materially and adversely affects the consideration to be paid by any party to the transaction."

Prelicensure examinations to change October 1

Effective October 1, 1999, the number of questions in the "Arizona Specific" portion of the Arizona real estate salesperson and broker examinations will be increased from 50 to 60. In addition, the number of "pretest" questions, described below, will be increased from five to six.

"We decided to increase the number of Arizona Specific questions after the change was suggested by a blue-ribbon industry committee made up of brokers and agency owners, and after consulting the Arizona Real Estate Advisory Board and Commissioner Holt," said John Bechtold, the Department's Director of Education and Licensing. "We wanted to do a more thorough job of testing applicants' knowledge of Arizona real estate statutes and Commissioner's Rules."

The Department, working with Assessment Systems, Inc. (ASI), the contractor who creates and administers the Arizona real estate examinations, has developed a more detailed content outline for the Arizona specific portion of the examination. "This should give educators and license candidates a better idea of what to expect," Mr. Bechtold added.

Content Outline

I. Ownership/transfer (30% of the ques-

tions)

- A. Legal descriptions
- B. Deeds
- C. Liens and judgments
- D. Title/recording
- E. Community property
- F. Homestead exemption
- G. Subdivision and unsubdivided lands
- H. Common interest ownership
 - 1. Time-shares
 - 2. Homeowner's association
- I. Water rights
- J. Environmental hazards and regulation

II. Licensing (10%)

- A. Activities requiring a license
- B. Issuance, renewal, revocation and suspension procedures
- C. General licensing requirements and Recovery Fund
- D. Powers and duties of the Real Estate Commissioner

III. Activities of licensees (35%)

- A. Employment contracts
- B. Advertising
- C. Offers
- D. Purchase contracts
- E. Disclosures
- F. Handling of funds
- G. Record keeping and documentation
- H. Agency

- I. Licensee violations and penalties
- J. Broker-salesperson relationship
- K. Compensation/commissions
- IV. Finance/settlement (20%)
 - A. Instruments
 - B. Settlement procedures
 - C. Property taxation
 - D. Foreclosure and forfeiture
- V. Leasing and Property Management (5%)
 - A. Arizona Residential Landlord and Tenant Act
 - B. Property management

It should be noted that "pretest" questions are included in the license examination. These are questions being tested by ASI and the Department of Real Estate for possible inclusion in future examinations. Although the answers submitted by licensure candidates are evaluated by ASI and the Department, they are not considered when determining the applicant's score.

The number of pretest questions in the Arizona Specific portion of the license examination will increase from five to six. Instead of containing 55 questions, beginning October 1 the examination will contain 66 questions.

For more information about ASI, visit their Web site at www.asivcs.com.

Year-end statistics show nearly 47,000 active and inactive AZ real estate licensees

Arizona had 46,706 active and inactive real estate licensees at the end of June, 1999, according to statistics compiled by the Department's Administration Division. This figure does not include 4,309 entity licensees (corporations, partnerships and limited liability companies).

In addition, there are 3,457 people whose licenses have expired, but who are within the one-year grace period for late renewal.

A breakdown of these figures shows:

- Active licensees: 35,708
- Inactive Licensees: 10,998
- Active brokers: 11,704
- Inactive brokers: 1,412
- Active salespersons: 24,004
- Inactive salespersons: 9,586
- Expired brokers: 270
- Expired salespersons: 3,187

Active entities: 3,511

Inactive entities: 798

Customer Services

The Department's Customer Services Division processed 569 Public Assistance Requests between July 1, 1998 and June 30, 1999. A Public Assistance Request is defined as a request from the public and licensees for information about procedures, policies, statutes, rules, licensing requirements and requests for information about filing a formal complaint.

In addition, the Division mailed 689 formal complaint forms, mailed or faxed 5,820 other forms, fielded 55,430 telephone calls, and personally assisted 546 walk-in customers.

Administrative Actions

Twenty-four license applications were denied (16 without an administrative hearing), 8 licenses were

summarily suspended, 32 cases were scheduled for administrative hearing and 42 additional cases were settled by consent order rather than administrative hearing. Civil penalties assessed totaled \$71,500.

Education and Licensing

In our Education and Licensing Division, 26,698 people visited the Department to obtain, change or renew a license. A total of 22,402 license renewal applications were mailed to licensees, and 37,021 new and renewal licenses were issued.

During 1998, 729 candidates took the State real estate broker's examination and 6,306 took the salesperson's examination. Of those, 89 percent of the broker candidates and 87 percent of the salesperson candidates passed the examination on the first attempt.

1999 'Arizona Real Estate Law Book' to be published soon

The Department's 1999 *Arizona Real Estate Law Book*, containing all 1998 and 1999 amendments and additions to Arizona real estate statutes, and the 1999 Commissioner's Rules, will be published late in August.

The 1999 *Law Book* will fit the special seven-ring binder furnished with earlier editions.

Advance orders are being accepted now. The cost of the book, which replaces the entire contents of the 1997 edition, is \$13. The seven-ring binder,

if you do not already have one, is priced at \$7. There is a \$3 shipping charge for the book or the book plus the binder.

To order your copy, send your check to

Law Book
ADRE

2910 N. 44th Street, Ste 100
Phoenix AZ 85018

You may also place your advance order at the Department's Phoenix or Tucson office.

New legislation affects licensees

Three bills passed by the 1999 Arizona Legislature have a direct effect on real estate licensees. The 1999 *Arizona Real Estate Law Book*, to be published later this month, will contain the revised statutes. The new legislation becomes effective August 6. HB 2041

This bill expands the exemptions for those who engage in real estate activities for their own property from licensure by the Department of Real Estate. A corporation is exempt if it acts through its officers if they do not receive special compensation and if the majority of their time does not involve the acts of a real estate broker.

There is an additional exemption for employees as well as officers of a corporation if the activity is only incidental to the business of the corporation and the officers and employees do not receive special compensation or other consideration for the activity.

An exemption from licensing also is provided for trust companies owned by federally-regulated bank holding companies and for banks in exercising their fiduciary duties under the terms

of a trust agreement.

HB 2236

A property management firm or a property owner may pay a finder's fee to an unlicensed person who is a tenant in an apartment complex. Referring tenants are limited to receiving a rent reduction of not more than \$100 six times per year. Referring tenants are prohibited from advertising or promoting their services related to procuring prospective tenants. Property management firms must retain records of finders' fees paid.

HB 2404

This bill requires notification in a public report before any subdivider or unsubdivided land can be sold or leased that the property is in the "territory in the vicinity" of a public airport. See the story on page 9.

Two bills introduced in the 1999 Legislature failed to pass.

HB 2373

The main purpose of this bill was to change the definition of "acting in concert" with regard to illegal subdividing.

How to contact ADRE by phone, fax and modem

PHOENIX OFFICE
(602) 468-1414

Division Extension Numbers

Administration 135
Auditing and Investigations 500
Customer Services 100
Education & Licensing 345
Subdivisions 400
Public Information Office 168

Division Fax Numbers

Administration (602) 468-0562
Auditing (520) 628-6941
Investigations (602) 468-3514
Education and Licensing
(602) 955-6284
Customer Services (602) 955-6284
Subdivisions (602) 955-9361
Public Information Office (602) 955-6284

TUCSON OFFICE

(520) 628-6940
Fax (520) 628-6941

FAX RESPONSE SERVICE
(602) 468-1414, Extension 3

WORLD WIDE WEB
www.re.state.az.us

E-MAIL
www.re.state.az.us/phones.html

The definition in the original bill would have made it extremely difficult for the Department to pursue actions against illegal subdividers. Several meetings were held to work out a compromise, but a compromise was not reached. Because there was no compromise and there were not enough votes to pass the bill in the Senate, proponents of the bill did not bring the bill to a final vote.

SB 1054

This bill would have taken away the authority of counties to regulate subdivisions for lots less than 2.5 acres instead of the current 36 acres. The bill failed to pass the Senate by a vote of 11-18.

Arizona Department of Real Estate
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